

Exhibit 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:	Case No.
RESIDENTIAL CAPITAL, LLC, et. al,	12-12020(MG)
Debtors.	

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DEPOSITION OF JEFFREY A. LIPPS

New York, New York

November 19, 2012

10:13 a.m.

Reported by:
JENNIFER OCAMPO-GUZMAN, CRR, CLR
JOB NO: 27971

November 19, 2012

10:13 a.m.

Deposition of JEFFREY A. LIPPS,
held at the offices of Kramer, Levin,
Naftalis & Frankel, 1177 Avenue of the
Americas, New York, New York, pursuant
to Notice, before Jennifer
Ocampo-Guzman, a Certified Real-Time
Shorthand Reporter and Notary Public of
the State of New York.

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2 Q. So is it fair to say that --

3 A. I would also add, there is one
4 other, there is one other thing that you
5 would take into account. To the extent the
6 information is available, you would also want
7 to have an understanding as to what value is
8 being experienced in other, similar
9 litigation.

10 For example, just take a very
11 simple situation, if you have a broken leg
12 case, you would want to know what values or
13 ranges of exposure and/or settlements are out
14 there on broken leg cases.

15 So in addition to the law and
16 looking at exposure, if you have that data,
17 then you would factor that in.

18 Q. And generally speaking, how do you
19 go about making your assessment as to where
20 in the range between top and bottom a fair
21 settlement would be?

22 A. Well, it would depend on the
23 circumstances of the individual matter and
24 the cases.

25 I mean here, I sort of described

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2 how, well, I actually have described how I
3 went about assessing the reasonableness. I
4 surveyed the issues and tried to determine
5 whether or not there were dispositive rulings
6 out there that would impact what your likely
7 exposure was, and then you evaluate what the
8 top line exposure is and a baseline exposure,
9 which could be, if you want to approach it
10 from a pure defense verdict standpoint, zero.

11 Q. So in this methodology that you
12 typically apply in evaluating a settlement,
13 do you assign numbers to any issues?

14 MR. RAINS: Objection, vague and
15 ambiguous.

16 A. I'm not sure what you mean by
17 numbers, do I assign numbers.

18 Q. Are you familiar with the term
19 "litigation risk analysis"?

20 A. I don't know. I may. Just depends
21 on what you mean by that term.

22 Q. Are you familiar with --

23 MR. BENTLEY: Strike that.

24 Q. In analyzing a settlement, one
25 thing you do, I think, is you try to

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2 don't have a clear recollection of going
3 through that type of an analysis,
4 specifically, in a request from a client.

5 Q. Have you ever done that kind of an
6 analysis in an RMBS-related matter?

7 A. No.

8 Q. And I take it you didn't do that
9 kind of an analysis, in connection with this
10 settlement?

11 MR. RAINS: Objection, vague and
12 ambiguous.

13 A. I don't know that I can say that.
14 I don't know that I can say that.

15 Q. Did you assign any percentage
16 likelihoods to different, to any different
17 possible outcomes in this case?

18 A. I don't think, as you can tell in
19 this report, I don't think -- let me take a
20 step back.

21 As you can tell in this report,
22 this area of the law is in, at best, its
23 formative stages. It's -- it's still
24 evolving, it's still developing. And there
25 is so much uncertainty on so many issues that

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2 I don't think it would be meaningful to sit
3 and try and assess a percentage attached to a
4 particular outcome.

5 I think you have to look at the
6 two points, which is, what's your maximum
7 exposure out there and then what is your
8 likely exposure, to try and evaluate a range
9 of reasonableness.

10 Q. And --

11 MR. BENTLEY: Strike that.

12 Q. Do you claim to have any expertise
13 in quantitative matters?

14 MR. RAINS: Objection, vague and
15 ambiguous.

16 A. I don't know what it is.

17 Q. Do you claim to have any expertise
18 in the field of statistics?

19 A. I don't think I'm offering myself
20 as an expert statistician, if that's what
21 you're asking.

22 Q. Do you have any education or
23 training in statistics?

24 A. I certainly, I took statistics back
25 when I was in school, and I've also been

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2 make any attempt to review the sale
3 agreements to determine how common EPD stips
4 were in those agreements?

5 A. No, but I did look at what the
6 aggregate repurchase number had been of loans
7 subject to loss, to get a data point that
8 would allow me to assess whether the
9 settlement was fair and reasonable.

10 Q. You looked at the debtor's
11 prepetition repurchase experience, is that
12 what you're saying?

13 A. As I said, I understand that there
14 was 1.16 billion out of some \$30 billion
15 worth of losses that had been repurchased, so
16 that was something in the three or
17 four percent range.

18 I also know that in one of the
19 litigations, the MBIA litigation with respect
20 to five securitizations, there was repurchase
21 activity that was done prior to any request
22 being made by either investors in those
23 executions or MBIA, some of which would be
24 loans that would be considered to be EPDs and
25 at least one, maybe two of those

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2 but -- less expansively, but nonetheless
3 touched upon, which was GMAC Mortgage. So if
4 you ask me that in terms of familiarity, I
5 can't agree with you on that.

6 However, it wasn't part of what I
7 was evaluating, as I was evaluating this
8 settlement.

9 Q. As --

10 A. So I haven't refreshed myself on
11 it, let's say.

12 Q. You have not refreshed yourself?

13 A. I have not refreshed myself on the
14 very granular specific of what time period
15 would give rise to an audit and what specific
16 circumstances would give rise to an audit.

17 Q. In connection with preparing your
18 supplemental declaration, you didn't feel it
19 was necessary to be familiar with the details
20 of that process?

21 A. What I utilized from that process,
22 for purposes of evaluating the settlement,
23 was a couple data points. One was the data
24 point that I've indicated before, which is,
25 out of roughly \$30-plus billion worth of

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2 losses, ResCap had repurchased 1.16 billion.
3 So that gave me a three to four percent data
4 point on what percentage of exposure would be
5 repurchased; and secondly, I also considered,
6 in determining the range of reasonableness
7 experienced, with which I was familiar in the
8 MBIA RFC litigation, where there was a wave
9 of put-backs that were presented by MBIA. I
10 can't remember the exact number of loans, but
11 there was a wave of them in roughly May of
12 2008, which ran through the process at RFC of
13 evaluating those and resulted in something in
14 the 20 percent range of repurchases out of
15 those loans that were put back. And those
16 were defaulted loans, it was my
17 understanding.

18 So I used those two data points as
19 information that I then fed into my analysis
20 and evaluation to sort of figure a low-end
21 prospect for exposure, three to five percent,
22 six percent. Okay. So that's how I utilized
23 that information. I didn't get into the
24 details of how many loans were audited and
25 what circumstances would give rise to an

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2 audit. I looked at the numbers I've
3 described.

4 Q. So let me just try to unpack what
5 you just described.

6 You testified that you noted that
7 ResCap had repurchased about, had paid about
8 \$1.6 billion to repurchase loans.

9 A. 1.16 on \$30 billion worth of
10 losses.

11 Q. Now the repurchases in response to
12 MBIA demands, those are a subset of that
13 1.16 billion?

14 A. I would assume those dollar values
15 would be packed into the 1.16.

16 Q. Okay. Do you know the breakdown,
17 the breakout of --

18 MR. BENTLEY: Strike that.

19 Q. With respect to the \$1.16 billion,
20 did you try to understand what portion of
21 that consisted of voluntary purchase and what
22 portion was nonvoluntary?

23 A. No, I didn't need to know that.

24 Q. Did you try to understand the
25 different components of the voluntary

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other counsel that had been defending these cases, and I, together with people on my team, discussed our experience in the RMBS litigation and, in the course of that, addressed RMBS exposure.

Q. This is a meeting with Jamie Levitt and others at her firm?

A. She was one that was in attendance.

Q. When did you first discuss with --

MR. BENTLEY: Strike that.

Q. When did you first learn of settlement discussions that were happening with Kathy Patrick?

A. Let me make a couple of things clear. I was not involved in any settlement discussions with Kathy Patrick and was not involved in presenting to the board or anyone any information regarding the settlement.

I seem to recall that sometime in early May, given our experience with respect to these securitizations and the transaction documents, I was asked to have people on my team prepare a shell agreement that would contain certain provisions that would be part

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2 filled in. But I don't know whether the
3 amount was ever filled in while I was aware
4 of it.

5 I then went off on other projects.

6 MR. RAINS: The question was
7 conversations.

8 A. Well, the conversations would only
9 be in the context of a draft agreement.

10 Q. Were you at any point asked to give
11 any advice, in connection with the potential
12 settlement with Ms. Patrick?

13 A. I was not.

14 Q. Did you ever at any point give any
15 advice in that regard?

16 A. Well, I've offered an opinion here
17 as to whether I think the settlement is fair
18 and reasonable.

19 Q. Let me try again.

20 At any time before the execution of
21 that settlement, did you give any advice to
22 anybody about it?

23 A. No. As I told you, we weren't
24 involved in negotiations. We were not
25 involved in any presentations to the board.

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2 Q. Or giving advice to anybody?

3 A. I didn't give advice to anybody
4 about the settlement.

5 Q. At either the debtors or at Ally?

6 A. I had no discussions with Ally
7 about the situation we're talking about right
8 now.

9 Q. When did you first begin to
10 consider the issues addressed in your
11 settlement declaration?

12 A. You know, I've thought about that,
13 because I knew you were going to go ask me
14 that. And I seem to recall that I had been
15 asked by Morrison & Foerster to do the
16 analysis that is reflected in my supplemental
17 declaration sometime maybe in August, I want
18 to say, just because I think there was a
19 deadline that was then extended to the end of
20 September.

21 And so I would have had some early
22 first discussion about this exercise, and I
23 want to say it was sometime around August;
24 but with the schedule then changed, I started
25 working on it over, you know, the course

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2 A. Nothing was prescribed to me. I
3 was to bring my expertise and experience to
4 the process and offer an opinion. Were I
5 able to do so, as it turned out, I was.

6 Q. In forming your opinion, what
7 factors did you consider?

8 A. I think I've written about it in my
9 declaration. I mean I went through and
10 evaluated the rep and warranty claims which
11 were being released in the settlement. I had
12 direct experience in many cases in dealing
13 with the legal issues that would need to be
14 addressed or resolved were there not to be a
15 settlement. And I've gone through those in
16 here, and we can go through them if you want
17 specifically; but the bottom line is, if I
18 were to have found a dispositive principle
19 then that could impact how I evaluated the
20 settlement. With the state of the law,
21 uncertain as it was, that was a part of how I
22 evaluated it.

23 The other part of it is I have
24 direct experience in the litigation with
25 claims being made that there was rep and

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2 warranty exposure in the range of 80, 90, I
3 think even some of them were approaching
4 100 percent defect rate on these loans. So
5 what you have to look at when you look at the
6 settlement, you look at the top side,
7 anywhere from 80 to 100 percent of potential
8 exposure out there in an environment of
9 uncertain legal issues with good arguments
10 often on both sides. Some of the law that's
11 favorable to the plaintiff is in the context
12 of the monoline industry, which may not be
13 directly imported into those nonwrapped
14 securitizations, so I took that into account.

15 I've indicated the data points that
16 I've looked at with respect to the
17 repurchase, voluntary repurchase experience,
18 and those instances that I was aware of where
19 there were put-backs demands by MBIA and what
20 that experience was, and then I also added,
21 as an additional data point, what I was able
22 to evaluate or obtain, I guess -- not
23 evaluate. I did evaluate it -- but obtained
24 from public filings with respect to other
25 settlements of rep and warranty claims,

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2 specifically Bank of America and the Lehman
3 estimating process.

4 And there were some studies in
5 terms of breach rates that were reflected
6 within the Bank of America settlement, and
7 then there were some expert opinions that
8 were being offered in the Lehman estimating
9 procedure. So I used that data point to
10 evaluate where in other contexts rep and
11 warranty claims were being valued, and when I
12 factored in the uncertainty as I wrote on the
13 various legal issues and took into account
14 that at the end of the day there would be
15 percentages even were we able to prevail on
16 everything, where we were buying out a
17 settlement of 19 -- roughly 19 to 20 cents on
18 a dollar is a fair and reasonable range,
19 given the state of the law and these other
20 sources of information regarding how rep and
21 warranty claims are valued.

22 Q. I want to return to each of the
23 points you made. But first, let's try to
24 start on a big picture level and then drill
25 down into the details, if that's okay with

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, Jennifer Ocampo-Guzman, a Notary
Public within and for the State of New York,
do hereby certify:

That JEFFREY A. LIPPS, the
witness whose deposition is hereinbefore set
forth, was duly sworn by me and that such
deposition is a true record of the testimony
given by the witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage, and that I am in no
way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 20th day of
November 2012.

JENNIFER OCAMPO-GUZMAN, CRR, CLR